



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596-AD00

Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comment

SUMMARY: The Food, Conservation, and Energy Act of 2008 (hereinafter the “2008 Farm Bill”), provides that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian tribes (Indian tribes) trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. The proposed rule is needed to implement section 8105 of the 2008 Farm Bill. Pending rulemaking, the Forest Service issued an Interim Directive providing short-term direction for tribal requests for forest products for traditional and cultural purposes.

DATES: Comments must be received in writing by [INSERT DATE 60-days from date of publication in the FEDERAL REGISTER.]

ADDRESSES: Written comments concerning this notice should be addressed to Director, Forest Management Staff, USDA Forest Service, Mail Stop 1103, 1400 Independence Avenue, SW., Washington, D.C. 20250 or by email to FarmBillForestProductsRule@fs.fed.us.

Comments may also be submitted via the world wide web/Internet at <http://www.regulations.gov>.

All comments, including names and addresses when provided, are placed in the record and are

available for public inspection and copying. The public may inspect comments received at the Office of the Director, Forest Management Staff, Sidney Yates Building, Third Floor SW Wing, 201 14th Street SW, Washington, D.C. or via the world wide web/Internet at http://www.fs.fed.us/forestmanagement/traditional_cultural/index.shtml. Visitors are encouraged to call ahead to 202-205-1766 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Assistant Director, Forest Products, 202-205-1753 or Sharon Nygaard-Scott, Forest Service, Forest Management Staff, 202-205-1766, during normal business hours. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The Forest Service is issuing this proposed rule to formally implement section 8105 of the 2008 Farm Bill (section 8105). (Section 8105 has also been codified in 25 U.S.C. Chapter 32A - Cultural and Heritage Cooperation Authority, section 3055 Forest Products for Traditional and Cultural Purposes.) Subject to certain statutory limitations, section 8105 allows the Secretary of Agriculture to provide Indian tribes with trees, portions of trees, or forest products for traditional and cultural purposes. Specifically, section 8105(a) provides that the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

However, pursuant to section 8105(b), Indian tribes are prohibited from using any trees, portions of trees, or forest products provided under section 8105(a) for commercial purposes. While the 2008 Farm Bill does not define commercial purposes, it does define

Indian tribe and traditional and cultural purpose. Section 8102(5) defines Indian tribe as any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1). In addition, per section 8102(9), traditional and cultural purpose, with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

On December 2, 2009, the Forest Service published an Interim Directive (ID) to the Forest Service Handbook (FSH) 2409.18 to implement section 8105 of the 2008 Farm Bill. The ID was reissued, without change, effective March 8, 2011 (ID 2409.18-2011-1). On June 7, 2012, the Forest Service reissued the ID again (ID 2409.18-2012-2), and revised it to allow the Forest Service use of section 8105’s authority during the rulemaking period. The June 7, 2012, ID extended the effective date of the 2011 ID to December 7, 2013. On December 6, 2013, the direction issued in ID 2409.18-2012-2 was reissued, without change, as ID 2409.18-2013-3, and will remain in effect until June 6, 2015.

The ID established Forest Services’ policy for providing Indian tribes with trees, portions of trees, or forest products for noncommercial traditional and cultural purposes. Based on the comments received on the ID during formal government-to-government consultation, as well as the Agency’s experience using the ID to implement section 8105 over the last 3 1/2 years, the Agency is now publishing this proposed rule.

This proposed rule adds § 223.15 to 36 CFR Part 223, Subpart A. Section 223.15(a) authorizes Regional Foresters or designated Forest Officers to provide trees, portions of trees, or

forest products to Indian tribes free of charge for noncommercial traditional and cultural purposes. Section 223.15(b) contains the 2008 Farm Bill’s statutory definitions of “Indian tribe” and “traditional and cultural purpose,” as well as the Forest Services’ regulatory definition of “tribal officials.”

Sections 223.15(c) and (d) describe who can request trees, portions of trees, or forest products for noncommercial traditional and cultural purposes, and where those requests should be directed. Tribal Officials should submit requests for forest products to their local Forest Service District Ranger’s office for routing to the appropriate designated authority. In addition, Tribal Officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose. A designated Forest Officer is an individual whom the Regional Forester has granted written authority to provide products under § 223.15. Currently, there is no limitation on the number of requests or authorizations per unit of a forest product or the number of requests or authorizations per Indian tribe. There is currently no limitation on the amount of trees, portions of trees, or forest products that can be requested at any one time. However, Forest Officers cannot grant materials in excess of the value limitations at § 223.15(e) in any given fiscal year.

Section 223.15(f) explains that the Forest Service may condition or deny requests for trees, portions of trees, or forest products under § 223.15. Finally, § 223.15(g) provides that all decisions made under § 223.15 must comply with relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, and all other applicable laws, regulations, and policies. The Forest Service will do its best to process requests received in a reasonable period of time, in light of these statutory and regulatory requirements.

II. Formal Government-to-Government Consultation

After issuance of the December 2, 2009, Interim Directive (ID 2409.18-2009-2), the Forest Service formally entered into consultation with Indian tribes, with the Regional Foresters extending invitations to Indian tribes by May 1, 2010. The ID was subsequently revised to allow the Forest Service use of section 8105's authority during the rulemaking period. The ID also extended the effective date to December 7, 2013 (ID 2409.18-2012-2). The ID was reissued, without change, as ID 2409.18-2013-3, and will remain in effect until June 6, 2015. This consultation was conducted under Executive Order (EO) 13175, Consultation and Coordination with Indian Tribal Governments. Indian tribes were provided the ID to FSH 2409.18, and were invited to consult on proposed changes to 36 CFR part 223. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010.

Regional Foresters were directed to invite all federally recognized Indian tribes in their Region to consult. In addition, they were directed to invite any federally recognized Indian tribes who have expressed an historical connection to National Forest System lands in their Region, even if they no longer reside there. To make the consultation more effective, the Forest Service provided Indian tribes with a question and answer document describing the Interim Directive and Forest Services' intent to implement section 8105 of the 2008 Farm Bill through proposed changes to 36 CFR part 223.

Summary of Comments and Responses

The Forest Service received 88 comments as a result of consultation, several of which were similar in scope and nature. The Agency's responses to the comments are provided below.

The Forest Service should define the term "forest products."

The 2008 Farm Bill does not define "forest products" under section 8102 definitions. Neither does section 8105 define "forest products" or provide a list of forest products. The

Forest Service has chosen not to further define the statute's use of the term "forest products".

Although not defined, the term "forest products" is used in other laws and regulations, including but not limited to, the Multiple-Use Sustained-Yield Act of 1960, as amended; the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended; and 36 CFR 223.

Does the Forest Service consider gravel to be a forest product under the proposed rule?

Gravel is included in the definition of mineral materials at 36 CFR 228.42. Thus, gravel is not considered a forest product. In addition, the Agency does not consider animals, animal parts, insects, minerals, rocks, soil, water, and worms as forest products.

Barter and sale of forest products are traditional and cultural purposes and the proposed rule provides forest products for noncommercial traditional and cultural purposes.

Traditionally, Indian tribal members gather forest products to barter and sell. However, this rule specifically provides forest products to Indian tribes for noncommercial traditional and cultural uses. This rule is promulgated to make it easier for Indian tribes to request appropriate amounts of forest products. Subject to various limitations, individual Indian tribal members will have free use to gather forest products under the separate rule, Special Forest Products and Botanical Products Final Rule once it is promulgated.

The Forest Service should provide individual members of Indian tribes with free trees, portions of trees, and forest products under section 8105.

Tribes were concerned that "trees, portions of trees, or forest products" should be free of charge not only to Indian tribes, but also to individual "enrolled members." The Forest Service is promulgating an entirely separate rule, the Special Forest Products and Forest Botanical Products Final Rule, which may be used by all individuals, including, but not limited to individual tribal members outside of their affiliation with an Indian tribe, to obtain free use of

forest products, subject to various limitations. When finalized, that rule may be used to obtain free use for traditional and cultural purposes in appropriate instances. This proposed rule, however, is a separate rule specifically providing forest products to an Indian tribe, and in appropriate amounts for traditional and cultural purposes, which may be greater than what the Special Forest Products and Forest Botanical Products Final Rule provides to an individual, in order to accommodate tribal requests. Tribal requests will be submitted by tribal officials on behalf of an Indian tribe.

Indian Tribes in California want the Forest Service to continue using the Region 5 Gathering Policy.

Indian tribes of California are concerned with retaining and securing the “Region 5 Gathering Policy”—an interagency agreement between the Forest Service Region 5 and the California Bureau of Land Management—where the gathering of forest products for traditional and cultural purposes continues to be open to individuals and non-federally recognized tribes. Section 8105 only authorizes the Secretary to provide products to federally recognized Indian tribes. The process for members of non-federally recognized tribes to request forest products for personal use is outside the scope of this rulemaking and will be addressed separately under the Special Forest Products and Forest Botanical Products Final Rule.

How do value limitations affect an Indian tribe’s requests for forest products?

The value limits in § 223.15(e) are internal Forest Service designations of authority that specify which Forest Service Officers may approve forest products requests based on the value of the forest products requested. The value limitations do not limit the value of forest products that Indian tribes may request. The limits represent the total amount of value a particular Forest Service Officer may provide an Indian tribe in a given fiscal year. Pursuant to § 223.15(d),

requests for any value of forest products should be directed to the appropriate Forest Service District Ranger's Office from which the products are being requested. The District Ranger's Office will then ensure that the request is evaluated by a Forest Service Official authorized under § 223.15(e).

For all forest products, including timber, the Forest Service determines fair market value by methods authorized by the Chief, Forest Service through issuance of Agency directives. Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments (36 CFR 223.60). The Chief is also required to establish minimum stumpage rates for species and products on individual National Forests, or groups of National Forests. All forest products, including timber, are required to be sold for appraised value or minimum stumpage rates, whichever is higher, with limited exceptions (36 CFR 223.61). The determination of these values or rates does not limit how much timber an Indian tribe can request.

If a tribe makes a request for a species that has a considerably higher value than the maximum value that can be authorized by a local official, then the request will be forwarded to a Forest Official who has the authority to grant the request. Pursuant to § 223.15(e), if the value of the species requested is greater than the value that may be locally granted, the request will be forwarded as follows—District Ranger (value limitation \$25,000), Forest Supervisor, (value limitation \$50,000), and Regional Forester (value limitation \$100,000). Requests that exceed \$100,000 in value will be reviewed and approved by the Chief of the Forest Service.

Who is drafting this rule?

The proposed and final regulation will be written by personnel at the Forest Service's Washington Office.

Indian tribes are concerned about access to gathering areas in National Forests.

Several Indian tribes expressed concerns about tribal elders having access to gathering areas, gathering being restricted due to commercial harvest, restricting commercial harvest to outside traditional gathering areas and designating gathering areas specifically for traditional and cultural purposes. While this rule does not designate gathering areas nor restrict where forest activities can occur, Indian tribes are encouraged to identify to local Forest Officials the location of forest products used for traditional and cultural purposes. Local Forest Officers will then be aware of gathering areas when planning projects.

Can standing timber be harvested under section 8105?

Under this rule, timber is not restricted to dead and down. However, cutting and removal of green timber shall be approved at the local Forest level.

Will the Forest Service keep information related to medicinal and ceremonial plants confidential?

A commenter expressed the need to keep information related to medicinal and ceremonial plants, including identification, uses, and locations, confidential. The Forest Service recognizes that confidentiality of medicinal and ceremonial plants is of the utmost concern to Indian tribes and shall, to the full extent allowed under law, maintain the confidentiality of culturally sensitive information provided by Tribes with the express expectation of confidentiality.

Do forest products for traditional and cultural purposes have priority over other uses and can traditional gathering areas be closed to those uses?

Indian tribes provided comments regarding forest products for traditional and cultural purposes having priority over other uses, such as, commercial uses (timber sales), and stated that, in order to maintain sustainability and access, traditional gathering areas should be closed to other uses. This rule does not prioritize use on National Forest System lands. The Forest Service does intend to ensure sustainability and access for multiple uses and users of the national forests in accordance with the Multiple Use Sustained Yield Act of 1960, as amended (16 U.S.C. 528-531).

The Forest Service should adopt the Interim handbook directive as its final policy.

Indian tribes would like consideration of comments provided through government-to-government consultation considered in a final rule. The Forest Service has considered all Indian tribes' comments in drafting this proposed rule. As a result, the Forest Service took the two actions described below. First, in response to Indian tribes stating they support the interim handbook directive being adopted as the final rule/final handbook directive, the Forest Service has incorporated the ID into the regulatory text of this proposed rule. Second, several Indian tribes stated they approve or support increasing the current value limitations for Forest Service officials to grant forest products to Indian tribes for traditional and cultural purposes, as described in the question and answer document supplied by the Forest Service during consultation. In response, the Forest Service has made these increased value limitations a part of the proposed regulation at § 223.15(e).

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under U. S. Department of Agriculture procedures and Executive Order 12866 on Regulatory Planning and Review as amended by 13422. The

Office of Management and Budget (OMB) has determined that this is not a significant rule. This proposed rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive Order 13272 regarding consideration of small entities and the Small Business Regulatory Enforcement Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Executive Order. The proposed rule will have no adverse impact on small business, small not-for-profit organizations, or small units of government.

Environmental Impact

This proposed rule has no direct or indirect effect on the environment. The rules at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions that do not significantly affect the quality of the human environment. The Department's assessment is that this proposed rule falls within this category of actions, and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Federalism

The Department has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and concluded that this action will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Consultation with Tribal Governments

Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Forest Service entered into consultation with Indian tribes regarding this proposed rule. Beginning on or before May 1, 2010, Indian tribes were provided with the Forest Service's Interim Directive on section 8105 of the 2008 Farm Bill, and were invited to consult on changes to 36 CFR part 223. In addition, the Forest Service provided a question and answer document related to the Interim Directive and regulatory actions the Agency was considering to implement section 8105. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010. The Forest Service received 88 comments as a result of consultation, including some received after September 1; all were considered in the development of this proposed rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that this action will not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

According to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320, a revised information collection package has been sent to OMB for review and comment.

Title: Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt

OMB Control Number: 0596-0085

Type of Request: Revision

Abstract: The information collection titled *Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt* is being revised to accommodate requests by Indian tribes for free use under section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651)[hereinafter the “2008 Farm Bill”], per the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320. Should Indian tribes seeking free use under the 2008 Farm Bill authority wish to obtain proof of possession, as may be required in some States, they could be issued a FS-2400-8 free use permit.

As stated earlier in this Proposed Rule, section 8105 of the 2008 Farm Bill provides that the Secretary of Agriculture may provide, free of charge, to federally recognized Indian tribes (Indian tribes) trees, portions of trees, or forest products from National Forest System lands for noncommercial traditional and cultural purposes. Section 8105 has also been codified in 25 U.S.C. Chapter 32A – Cultural and Heritage Cooperation Authority, section 3055 Forest Products for Traditional and Cultural Purposes. Pending rulemaking, the Forest Service issued policy via an Interim Directive (ID) providing short-term direction for tribal requests for forest products for traditional and cultural purposes. (The ID has been reissued as ID 2409.18-2013-2.)

Under 16 U.S.C. 551, individuals and businesses wishing to remove forest products from National Forest System lands must request a permit. Federally recognized Indian tribes seeking products under the 2008 Farm Bill authority must make a request for free use. To obtain a permit, applicants must meet the criteria at 36 CFR 223.1, 223.2, and 223.5-223.13, which authorizes free use or sale of timber or forest products. As noted above, section 8105 of the 2008 Farm Bill sets forth conditions under which free use of trees, portions of trees, or forest products may be granted to federally recognized Indian tribes. Upon receiving a permit, the permittee must comply with the terms of the permit (36 CFR 261.6), which designates forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material. The collected information will help the Forest Service and the Bureau of Land Management (for form FS-2400-1) oversee the approval and use of forest products by the public.

When applying for forest product removal permits, applicants (depending on the products requested) would provide information needed to complete one of the following:

- FS-2400-1, Forest Products Removal Permit and Cash Receipt, is used to sell timber or forest products such as fuelwood, Christmas trees, or pine cones (36 CFR 223.1, 223.2). The Bureau of Land Management (BLM) and the Forest Service share this form, which the Bureau of Land Management identifies as BLM-5450-24 (43 U.S.C. 1201, 43 CFR 5420). This form would not be used to issue products requested by federally recognized Indian tribes under the authority of section 8105 of the 2008 Farm Bill.
- FS-2400-4/4ANF, Forest Products Contract and Cash Receipt, are used to sell timber products such as sawtimber or forest products such as fuelwood. These forms would not be used to issue products requested by federally recognized Indian tribes under the

authority of section 8105 of the 2008 Farm Bill.

- FS-2400-8, Forest Products Free Use Permit, allows use of timber or forest products at no charge to the permittee (36 CFR 223.5-223.13). This form could be used to issue products requested by federally recognized Indian tribes under section 8105 of the 2008 Farm Bill.

Each form listed above implements different regulations and has different provisions for compliance, but collects similar information from the applicant for related purposes.

The Forest Service and the Bureau of Land Management will use the information collected on form FS-2400-1 to ensure identification of permittees in the field by agency personnel. The Forest Service will use the information collected on forms FS-2400-4/4ANF and/or FS- 2400-8 to:

- Ensure that permittees obtaining free use of timber or forest products qualify for the free-use program.
- Ensure that permittees obtaining free use of timber or forest products, under 36 CFR 223.8, do not receive product value in excess of that allowed by regulations. Note, however, that under section 8105 of the 2008 Farm Bill, there is no stated maximum free use limitation.
- Ensure that applicants purchasing timber harvest or forest products permits non-competitively do not exceed the authorized limit in a fiscal year (16 U.S.C. 472(a)).
- Ensure identification of permittees in the field by Forest Service personnel.

Applicants may apply for more than one forest products permit or contract per year. For example, an applicant may obtain a free use permit for a timber product such as pine cones (FS-2400-8) and still purchase fuelwood (FS-2400-4/4ANF). Additionally, there is no

limitation to the number of requests that each federally recognized Indian tribe may make under the 2008 Farm Bill authority.

Individuals and small business representatives usually request and apply for permits and contracts in person at the office issuing the permit.

Applicants provide the following information, as applicable:

- Name.
- Address.
- Personal identification number such as tax identification number, social security number, driver's license number, or other unique number identifying the applicant.

Under this proposed rule, federally recognized Indian tribes making requests under the 2008 Farm Bill authority would make their request in writing “....directly by a tribal official who has been authorized by the Indian tribe to make such requests; or ... by providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.” Additionally, “Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose...”

Agency personnel enter the information into a computerized database to use for subsequent requests by applicants for a forest product permit or contract. The information is printed on paper, which the applicant signs and dates. Agency personnel discuss the terms and conditions of the permit or contract with the applicant.

The data gathered is not available from other sources. The collected data is used to ensure:

- Applicants for free use permits meet the criteria for free use of timber or forest products

authorized by regulations at 36 CFR 223.5–223.13 or under section 8105 of the 2008 Farm Bill,

- Applicants seeking to purchase and remove timber of forest products from Agency lands meet the criteria under which sale of timber or forest products is authorized by regulations at 36 CFR 223.80, and
- Permittees comply with regulations and terms of the permit at 36 CFR 261.6.

The collection of this information is necessary to ensure that applicants meet the requirements of the forest products program; those obtaining free-use permits for forest products qualify for the program; applicants purchasing noncompetitive permits to harvest forest products do not exceed authorized limits; and that Federal Agency employees can identify permittees when in the field.

Estimate of burden: Reporting burden for the collection of information is estimated to average 5 minutes per response.

Respondents: Individuals, small businesses, and, for requests made under section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651), federally recognized Indian tribes.

Estimated Number of Respondents: 212,634

Estimated Number of Annual Responses per Respondent: 1.5

Estimated Total Annual Responses: 318,951

Estimated Total Annual Burden Hours: 26,579.25

We are requesting comments on all aspects of this information collection to help us to:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will

have practical utility;

- (2) Evaluate the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond.

All comments in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for OMB approval.

Upon approval of the final rule information collection package, the associated burden and any forms associated with this rulemaking will be merged into OMB control number 0596-0085, Forest Products Free Use Permit; Forest Products Removal Permit and Cash Receipt; and Forest Products Contract and Cash Receipt.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, and it has been determined that it has no effect on the supply, distribution, or use of energy. This proposed rule is administrative in nature and, therefore, the preparation of a statement of energy effects is not required.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. When the final rule is adopted, (1) all State and local laws and regulations that conflict with the final rule or that would impede full implementation of this rule will be preempted, (2) no retroactive effect will be given to the final rule; and (3), the Department will not require the

use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This action will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National Forests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Forest Service, U.S. Department of Agriculture, proposes to amend 36 CFR part 223 as follows:

Part 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, 113 Stat. 1501a, 16 U.S.C. 528 note; unless otherwise noted.

2. Add § 223.15 to subpart A to read as follows:

§ 223.15 Provision of trees, portions of trees, or forest products to Indian tribes for noncommercial traditional and cultural purposes.

(a) Pursuant to section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651) [hereinafter the “2008 Farm Bill”], Regional Foresters or

designated Forest Officers may, at their discretion, provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that:

(1) The trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and

(2) The trees, portions of trees, or forest products will not be used for commercial purposes.

(b) The following definitions apply to this section:

Indian tribe. The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

Traditional and cultural purpose. The term “traditional and cultural purpose,” with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

Tribal officials: The term “tribal officials” means elected or duly appointed officials of Indian tribal governments.

(c) Requests for trees, portions of trees, or forest products made under this section must be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made:

(1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or

(2) By providing a copy of a formal resolution approved by the tribal council or

other governing body of the Indian tribe.

(d) Requests for trees, portions of trees, and forest products made under this section must be directed to the appropriate Forest Service District Ranger(s)' Office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a noncommercial traditional and cultural purpose. When two or more National Forests are involved, all of the involved Forest Service District Ranger's Offices should be notified of the requests made on other forests.

(e) Agency Line Officers and managers (who have been authorized by name through official Forest Service correspondence) are authorized to provide trees, portions of trees, and forest products under this section subject to the following limitations:

- (1) District Rangers and Forest Officers may provide material not exceeding \$25,000 in value in any one fiscal year to an Indian tribe;
- (2) Forest Supervisors may provide material not exceeding \$50,000 in value in any one fiscal year to an Indian tribe;
- (3) Regional Foresters may provide material not exceeding \$100,000 in value in any one fiscal year to an Indian tribe; and
- (4) The Chief of the Forest Service may provide material exceeding \$100,000 in value to an Indian tribe.

(f) A request for trees, portions of trees, or forest products under this section may be conditioned or denied for reasons including, but not limited to the following:

- (1) Protecting public health and safety;
- (2) Preventing interference with Forest Service and/or commercial operations;

- (3) Complying with Federal and State laws and regulations;
- (4) Ensuring sustainability; or
- (5) Otherwise protecting National Forest System land and resources.

(g) All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, and all other applicable laws and regulations.

_____	<u>July 23, 2014</u>
Thomas L. Tidwell Chief, <u>Forest Service</u>	(date)

[FR Doc. 2014-18021 Filed 07/29/2014 at 11:15 am; Publication Date: 07/31/2014]